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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,461	03/11/2004	Thane Aaron Arheart	34432	6108

7590 07/14/2005  
 Hovey Williams LLP  
 Suite 400  
 2405 Grand Blvd.  
 Kansas City, MO 64108

EXAMINER

KENNEDY, JOSHUA T

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/798,461	ARHEART, THANE AARON	
	<b>Examiner</b>	<b>Art Unit</b>	
	Joshua T. Kennedy	3679	JK

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/11/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Claims 1-23 have been examined.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-5, 8, and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Schluter (U.S. Patent Application Publication 2002/0059764 A1).

Referring to Claim 1. Schluter discloses an expansion joint cover operable to accommodate movement of a first surface with respect to a second surface, the cover comprising:

a first bracket (1, left side) presenting a first mating member (12) and operable to be attached to one of the first surface, the second surface, and a cover plate;

a second bracket (1, right side) presenting a second mating member (12) and operable to be attached to another one of the first surface, the second surface, and the cover plate; and

a central bracket operable to be installed between the first and second brackets, the central bracket including -

a third mating member (3) operable to mate with the first member, slide with respect to the first member, and rotate with respect to the first member, and

a fourth mating member (2) operable to mate with the second member, slide with respect to the second member, and rotate with respect to the second member.

Referring to Claim 4. Schluter discloses fourth member presenting a cylindrical socket (24) with a longitudinal slit.

Referring to Claim 5. Schluter discloses the second member presenting a cylindrical plug (14) operable to fit within the socket.

Referring to Claim 8. Schluter discloses the third member is secured to the fourth member at an approximately ninety degree angle (4; Examiner interprets the connection created by the receiving groove (35) on the pocket leg (33) and extended through the cylindrical element (4) and corresponding to a second receiving groove (25) to create an approximately ninety degree angle).

Referring to Claim 21. Schluter discloses a roof joint cover operable to accommodate expansion, contraction, shear, and rotational movement of a first surface with respect to a second surface, the cover comprising:

a first bracket (1, left) operable to be attached to a cover plate which is to be attached to the first surface, the first bracket presenting a first cylindrical plug (14, left);

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a second bracket (1, right) operable to be attached to the second surface and

presenting a second cylindrical plug (14, right); and

a central bracket (2,3) operable to be installed between the first and second

brackets, the central bracket including -

a first cylindrical socket with a longitudinal slit (34) substantially along its

entire length and operable to fit around the first plug, slide with

respect to the first bracket, and rotate with respect to the first

bracket, and

a second cylindrical socket with a longitudinal slit (24) substantially along

its entire length, the second socket being secured at an

approximately ninety degree angle (4, see explanation above) to

the first socket and operable to fit around the second plug, slide

with respect to the second bracket, and rotate with respect to the

second bracket.

Referring to Claim 22. Schluter discloses each plug including at least one bearing (15;

Examiner interprets the word bearing by its definition "a supporting element." In this

case the bearing (15) is supporting the cylindrical plug to the first bracket) along its

entire length.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 6-7, 9-16, and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schluter.

Referring to Claims 2 and 3. Schluter discloses the cover substantially as claimed, but does not disclose the first member presenting a cylindrical socket with a longitudinal slit. Nor does Schluter disclose the third member presenting a cylindrical plug operable to fit within the socket. However, the referenced prior art discloses the first member (1) having a cylindrical plug (14) operable to fit within the sockets (34) of the third member (3). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify each plug and socket element as disclosed by the applicant by reversing which member contains the plug portion and which contains the socket portion. These are interchangeable elements. The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

Referring to Claims 6 and 7. Schluter discloses the cover substantially as claimed, but does not disclose the second member presenting a cylindrical socket with a longitudinal slit. Nor does Schluter disclose the fourth member presenting a cylindrical plug operable to fit within the socket. However, the referenced prior art discloses the second

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member (1) having a cylindrical plug (14) operable to fit within the sockets (24) of the fourth member (2). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify each plug and socket element as disclosed by the applicant by reversing which member contains the plug portion and which contains the socket portion. These are interchangeable elements. The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

Referring to Claim 9. Schluter discloses the cover substantially as claimed, but does not disclose the first member presenting a first cylindrical socket, nor is the third member presenting a first cylindrical plug operable to fit within the first socket disclosed.

However, disclosed is the fourth member (2) presenting a second cylindrical socket (24), and the second member (1) presents a second cylindrical plug (14) operable to fit within the second socket. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify each plug and socket element as disclosed by the applicant by reversing which member contains the plug portion and which contains the socket portion. These are interchangeable elements. The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

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Referring to Claim 10. Schluter discloses the third member being secured to the fourth member at an approximately ninety degree angle (4, see explanation above).

Referring to Claim 11. Schluter discloses each plug including at least one bearing (15, see explanation above).

Referring to Claim 12. Schluter discloses the cover substantially as claimed, but does not disclose the first member presenting a cylindrical socket, the third member presenting a cylindrical plug operable to fit within the socket, the second member presenting a cylindrical socket, and the fourth member presenting a second cylindrical plug operable to fit within the second socket. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify each plug and socket element as disclosed by the applicant by reversing which member contains the plug portion and which contains the socket portion. These are interchangeable elements. The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

Referring to Claim 13. Schluter discloses the third member is secured to the fourth member at an approximately ninety degree angle (4, see explanation above).



Referring to Claim 14. Schluter discloses each plug including at least one bearing (15, see explanation above).

Referring to Claim 15. Schluter discloses a roof joint cover operable to accommodate expansion, contraction, shear, and rotational movement of a first surface with respect to a second surface, the cover comprising:

- a first bracket operable to be attached to a cover plate which is to be attached to the first surface, the first bracket presenting a first cylindrical socket with a longitudinal slit substantially along its entire length (does not disclose);
- a second bracket (1, right) operable to be attached to the second surface and presenting a first cylindrical plug (14); and
- a central bracket (2,3) operable to be installed between the first and second brackets, the central bracket including -
  - a second cylindrical plug operable to fit within the first socket (does not disclose), slide with respect to the first bracket, and rotate with respect to the first bracket, and a second cylindrical socket (24) with a longitudinal slit substantially along its entire length, secured at an approximately ninety degree angle to the second plug (4), operable to fit around the first plug, operable to slide with respect to the second bracket, and operable to rotate with respect to the second bracket.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify each plug and socket element as disclosed by the applicant by

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reversing which member contains the plug portion and which contains the socket portion. These are interchangeable elements. The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

Referring to Claim 16. Schluter discloses each plug including at least one bearing along its entire length (15, see explanation above).

Referring to Claim 18. Schluter does not disclose roof joint cover comprising:

- a first bracket operable to be attached to a cover plate which is to be attached to the first surface, the first bracket presenting a first cylindrical socket with a longitudinal slit substantially along its entire length;
- a second bracket operable to be attached to the second surface and presenting a second cylindrical socket with a longitudinal slit substantially along its entire length; and
- a central bracket operable to be installed between the first and second brackets, the central bracket including -
  - a first cylindrical plug operable to fit within the first socket, slide with respect to the first bracket, and rotate with respect to the first bracket, and

a second cylindrical plug secured at an approximately ninety degree angle to the first plug and operable to fit within the second socket, slide with respect to the second bracket, and rotate with respect to the second bracket.

However, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify each plug and socket element as disclosed by the applicant by reversing which member contains the plug portion and which contains the socket portion. These are interchangeable elements. The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

Referring to Claim 19. The cover as set forth in claim 18, wherein each plug includes at least one bearing along its entire length (15, see explanation above).

Claims 17, 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schluter.

Schluter discloses the claimed invention, but did not specify each plug having approximately one inch in diameter and each socket including arcuate sidewalls approximately one quarter inch in thickness. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify each plug element as disclosed by the applicant to have approximately one inch in diameter and each socket

to include arcuate sidewalls approximately one quarter inch in thickness as such is a design consideration to one skilled in the art; A change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 4537003 to Huber et al. cited to show a similar expansion joint having a plug and socket connection.

U.S. Patent No. 3957241 to Morris cited to show a plug and socket joint utilizing a bearing.

U.S. Patent No. 4566242 to Dunsworth cited to show a similar expansion joint having a plug and socket connection between a first and second bracket.

U.S. Patent No. 4956955 to Ohmatsu cited to show a similar expansion joint having a plug and socket connection.

U.S. Patent No. 5383738 to Herbermann cited to show a joint having a plug and socket connection between a first and second bracket.

U.S. Patent No. 5657598 to Wilbs et al. cited to show a similar expansion joint having a plug and socket connection.

U.S. Patent No. 6357192 to Schluter cited to show a similar expansion joint having a plug and socket connection.

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U.S. Patent Application Publication No. 2003/0077110 to Knowles cited to show a similar expansion joint having a plug and socket connection.

U.S. Patent Application Publication No. 2003/0156890 to Tucker cited to show a joint having a connection at a ninety degree angle between two elements of the joint.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua T. Kennedy whose telephone number is (571) 272-8297. The examiner can normally be reached on M-F: 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JTK  
6/28/2005

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